MAR 26 1955
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1954

No. 675

JACK HANRATTY, PETITIONER

versus

UNITED STATES OF AMERICA, RESPONDENT

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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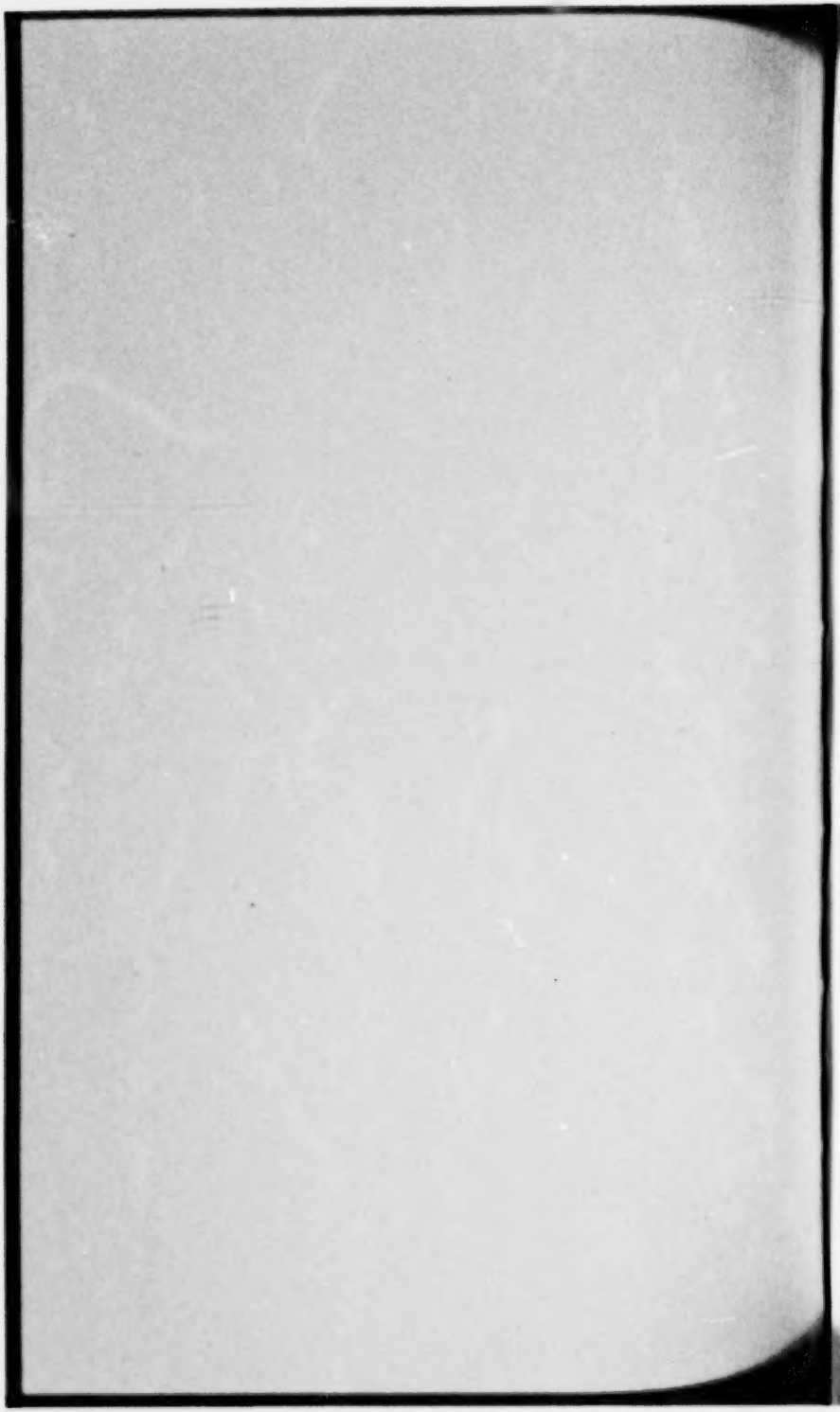

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JACK HANRATTY, PETITIONER

versus

UNITED STATES OF AMERICA, RESPONDENT

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Jack Hanratty, Petitioner here, prays that a writ of certiorari issue to review the judgment entered in this case on the 25th day of January, 1955, by the United States Court of Appeals for the Fifth Circuit.

Opinion

The opinion of the Court of Appeals is reported in 218 Federal Reporter, 2d Series, 358, and a copy of the opinion may be found in Transcript of Record at Page 311. A copy of such opinion is attached. (Appendix p. 7).

Jurisdiction

The judgment below was entered on the 25th day of January, 1955, and petition for rehearing was denied on the 24th day of February, 1955. The jurisdiction of this Court is invoked under Sec. 1254 (1) of Title 28 of the U. S. Code, entitled "Judicial Code and Judiciary," Act approved June 28, 1948, effective September 1, 1948. This action involves conviction for violations of Secs. 371 and 2314 of Title 18 of U.S.C.

Questions Presented

The questions presented by the opinion and record are these:

I.

Whether the grand jury which indicted, and the petit jury which tried and convicted Petitioner, Jack Hanratty, selected, impaneled and sworn pursuant to a plan, system and procedure fixed under the provisions of Article 2133, **Vernon's Annotated Statutes of the State of Texas,** enacted pursuant to the provisions of Article 16, Section 19, of the **Constitution of the State of Texas,** which expressly limits grand jury and petit jury service to men only, and expressly and impliedly excludes and prohibits women from serving on grand and petit juries, constituted a denial to Petitioner, Jack Hanratty, of a fair and impartial jury trial as guaranteed to him by the 6th Amendment to the Constitution of the United States.

II.

Whether there is any substantial evidence that the Petitioner, Jack Hanratty, entered into an agreement to cause

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to be transported in interstate commerce falsely made and forged securities.

III.

Whether there is any substantial evidence to connect Petitioner with an agreement to cause to be transported in interstate commerce falsely made and forged securities, as alleged in the conspiracy count in the indictment.

IV.

Whether there is substantial evidence to connect Petitioner, Jack Hanratty, with the act of causing to be transported in interstate commerce from San Antonio, Texas, to Tulsa, Oklahoma, a falsely made and forged security, to-wit, a $400.00 cashier's check, as alleged in the substantive count in the indictment;

The facts with reference to Paragraphs II, III and IV above were these: Petitioner, Jack Hanratty, Ellen Elizabeth Pool, appellant in the Court below, and Albert Granato, who did not appeal his conviction, were convicted of (1) conspiring to transport forged securities in interstate commerce, and (2) causing to be transported a falsely made and forged security, namely, a $400.00 cashier's check.

The defendants, Albert Granato and Ellen Elizabeth Pool, both testified positively that they did not have any kind or character of agreement or understanding with Petitioner, Jack Hanratty, or with each other, about the cashier's checks, or causing any of them to be placed in interstate commerce. The Government did prove that the package of blank checks, printed in the name of First National Bank, Tulsa, Oklahoma, identified as Government's Exhibit No. 10, was in the possession of Petitioner, Jack Hanratty; that he gave them to Lucille Scoggin and

asked her to fill out about $3,000.00 worth of them so he could use them as a flash during the baseball season; that she did partially fill out some of the checks, including the bogus check, identified as Government's Exhibit No. 1, and gave them to petitioner Hanratty; that, along about that time, petitioner Hanratty sent for a check protector, but there is no evidence whatever that the check protector was used in making up Government's Exhibit No. 1; that petitioner Hanratty had conversations at the Town Lounge with defendant Albert Granato, but there is absolutely no evidence of what was said during these conversations, except the undisputed testimony of defendant Albert Granato, who swore he was talking to petitioner Hanratty about renting the kitchen at the Town Lounge, which was vacant at the time; that petitioner Hanratty sent defendant Albert Granato to Joe's Barber Shop with Government's Exhibit No. 1 to put up as a wager in connection with the Walcott-Marciano prize-fight, with instruction not to cash the check, and the Government's proof shows the wager was not made because a suggestion that the check be cashed was refused. Boiled down, this was all the evidence on which the jury could base an unlawful agreement. True, there was undisputed proof of the cashing of the check some time later by the defendant Ellen Elizabeth Pool, but participation in the substantive offense charged, or participation in one or more of the overt acts alleged, are not in themselves sufficient to support an agreement to cause falsely made and forged securities to be transported in interstate commerce. There was no evidence and no substantial evidence to in any way connect Petitioner with the actual cashing of the bogus check by Ellen Elizabeth Pool.

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V.

Statutes Involved

Constitution of the State of Texas, Art. 16, Sec. 19; **Vernon's Annotated Civil Statutes of Texas,** Art. 2133.

VI.

Reasons for Granting the Writ

This Court, in the case of **Ballard v. United States,** 329 U.S. 186, 91 L.Ed. 181, held that the systematic exclusion of women from the jury in California violated the 5th and 6th Amendments to the Constitution of the United States. It is true that in California women were qualified to serve on juries, which was not true in Texas prior to the November, 1954, election, when a constitutional amendment was passed in Texas allowing women to serve on juries. However, as we view the broad language of this Court in the **Ballard** case, supra, it would appear that the same violence to the 5th and 6th Amendments to the Constitution of the United States was committed by the constitutional and statutory provisions of Texas as was done by the conduct of the officials in the **Ballard** case, supra. It thus appears that the opinion of the lower Court is in conflict with this Court's decision in the **Ballard** case, supra.

There are a great many States in the Union that still do not permit women to serve on juries and we feel that it is important to the jurisprudence of the Nation to define the scope of the **Ballard** case, supra, as to whether it applies to those States which exclude women from jury service.

It is uniformly held that the gist of the offense of conspiracy is the agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy. This being a

circumstantial evidence case, a verdict of guilty must not only be consistent with the guilt of the defendant but must be inconsistent with any other reasonable hypothesis of innocence, and that links in the chain of guilt, forged by purely circumstantial evidence, must be clearly proven and taken together, point to a moral certainty, not merely possibility or probability of guilt to justify conviction. Hence, we feel that the opinion of the lower Court is in conflict with the following decisions:

Pines vs. United States, 123 Fed. 2d, 825 (8th Circ.);
Kassin vs. United States, 87 Fed. 2d, 184 (5th Circ.);
Rent vs. United States, 209 Fed. 2d, 893 (5th Circ.):
McTyre vs. United States, 213 Fed. 2d, 65 (5th Circ.):
Lee vs. United States, 106 Fed. 2d. 906 (9th Circ.)

WHEREFORE, Petitioner, Jack Hanratty, prays that his petition for a writ of certiorari from this Court to the Court of Appeals for the Fifth Circuit be granted.

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APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 15106

JACK HANRATTY and ELLEN ELIZABETH POOL,
APPELLANTS,

versus

UNITED STATES OF AMERICA,
APPELLEE.

Appeals from the United States District Court for the Western District of Texas.

(January 25, 1955.)

Before BORAH and TUTTLE, Circuit Judges, and DAWKINS, District Judge.

TUTTLE, Circuit Judge: Appellants were convicted of (1) conspiring to transport forged securities in interstate commerce, and (2) causing to be so transported a

falsely made and forged security, namely a $400 cashier's check. The grounds of this appeal are that appellants maintain that there was no substantial evidence to support the verdict, and a verdict of acquittal should have been directed; and that appellants were deprived of a fair trial because women were excluded from the jury.

The evidence against the appellants was briefly as follows: Hanratty, owner of a San Antonio bar, had in his possession a package of checks printed by a San Antonio printer, one of which was later filled in and transported in interstate commerce in bank clearance. The checks purported to be cashier's checks in blank on the First National Bank of Tulsa, Oklahoma, a fictitious bank. The Federal Reserve identification number printed on the checks was that of the Alamo National Bank of San Antonio, where appellant Pool was employed. Hanratty asked witness Scoggin, also an employee of the Alamo Bank, to make up and fill out the checks, saying he wanted to "flash" them in connection with his gambling activities. Scoggin partly filled out the checks with typewriter making up fictitious names of payees, and signed a signature purporting to be that of a bank officer on them. Hanratty sent another witness out to obtain a check writing machine or protector, capable of putting the perforated, printed amounts on the checks which later appeared on one of them. The same witness testified that Hanratty took the check protector to the kitchen of his bar and locked it up and that Granato, a co-defendant who did not appeal his conviction, was seen to spend long hours in Hanratty's kitchen after the check protector was obtained. About the same time Hanratty sent out a witness to purchase a genuine $5.00 cashier's check from the Alamo Bank. Hanratty also asked two witnesses for blank

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cashier's checks of the Alamo Bank, where they were employed, and they refused to give them to him. All three defendants in the prosecution below frequently associated together at Hanratty's bar. Granato asked one witness how to identify a bad cashier's check, stating that he was in possession of several cashier's checks. Appellant Pool actually had the $400 check cashed at the Alamo Bank. A witness testified that she warned Pool that she thought the check was "not any good" a few minutes before Pool cashed it. At the time of cashing it, Pool told the teller she had known the payee three months, but at trial she said she had met him a few days before in a drug store. This payee was said by an earlier witness to be a fictitious person whose name she invented. The check actually cashed was one of the packages of printed checks in Hanratty's possession.

We think the convictions should be affirmed. There was abundant circumstantial evidence of a conspiracy and actual commission of the substantive crime by the appellants. The jury was given a charge as to circumstantial evidence more favorable to defendants than the charge to which they were entitled. **Holland v. United States,** 23 L.W. 4024, 4029 (U.S. Sup. Ct., Dec. 6, 1954). As to the contention that the convictions should be reversed because women were excluded from the jury, this argument seems utterly without substance, both because not timely objected to, and because such exclusion did not deprive appellants of any procedural right either under statute or the Constitution. **Frazier v. United States,** 335 U.S. 497, 69 S. Ct. 201, 93 L. Ed. 187; **Johnson v. Sanford,** 5th Cir., 167 F. 2d 738; **Quinones v. United States,** 1st Cir., 161 F. 2d 79, cert. den. 331 U.S. 833, 67 S. Ct. 1513, 91 L. Ed. 1846; 28 U.S.C. §§ 411, 412; Vernon's

Texas Statutes, Art. 2133; **Glover v. Cobb**, Tex. Civ. App., 123 S.W. 2d 794.

The judgments are

AFFIRMED.

A True Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Fifth Circuit.

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1. **Constitution of the State of Texas**, Art. 16, Sec. 19.

   "The legislature shall prescribe by law the qualification of grand and petit jurors."

2. **Vernon's Annotated Civil Statutes of Texas**, Art. 2133—Qualifications

   "All men over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications: ***"

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 675

JACK HANRATTY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 7-10; R. 311-314) is reported at 218 F. 2d 358.

JURISDICTION

The judgment of the court of appeals was entered on January 25, 1955 (R. 315) and a petition for rehearing was denied on February 24, 1955 (R. 320). The petition for a writ of certiorari was filed on March 26, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the indictment was invalid and the conviction after trial by jury vitiated because pursuant to Texas law women were excluded from service on the grand and petit juries concerned.

2. Whether the evidence was sufficient to support petitioner's conviction.

CONSTITUTIONAL PROVISION, STATUTE AND FEDERAL RULE OF CRIMINAL PROCEDURE INVOLVED

Article 16, Section 19 of the Texas Constitution provides:

> The legislature shall prescribe by law the qualification of grand and petit jurors.

Article 2133, Vernon's Annotated Civil Statutes of Texas provides:

> All men over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications: * * *

Rule 12(b)(2), F. R. Crim. P., provides:

> *Defenses and Objections Which Must Be Raised.* Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such de-

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fense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

STATEMENT

Petitioner and codefendants Albert Granato and Ellen Pool were convicted under a two-count indictment which charged transportation of a forged cashier's check in interstate commerce and conspiracy to commit such offense (R. 1-3, 25). Petitioner was sentenced generally to a term of imprisonment for five years (R. 32). On appeal the judgment of conviction was affirmed (R. 315).

The check in question was a forged cashier's check for $400 dated May 3, 1953, payable to one William R. Thayer, which showed the First National Bank, Tulsa, Oklahoma, as the issuing bank (Gov. Ex. 1, R. 274). It closely resembled cashier's checks issued by Alamo National Bank of San Antonio, Texas [Alamo], where it was cashed (R. 55), carried the same clearing house number, had the amount of the check stamped in by a check protector, and the signature handwritten (cf. Ex. 1, R. 274 and Ex. 9, R. 284; R. 56, 61-62, 105).

The evidence in support of the verdict may be summarized as follows:

Petitioner was the owner of a tavern which Miss Pool and Granato, a friend of 20 years' standing,

frequented (R. 115, 237). In March or April 1953, petitioner unsuccessfully approached Lucille Scoggin and Betty Davis, employees of Alamo, to bring him some blank cashier's checks (R. 100-101, 108, 119, 138). A few weeks later petitioner gave Miss Scoggin a package of blank checks which purported to be cashier's checks of the First National Bank of Tulsa, and which had been printed by a local printer (Ex. 10, R. 285, R. 74-76, 102). He told her to prepare fictitious checks from them in the amount of approximately $3,000 so that he could use them as a "flash" during the baseball season (R. 102, 110). From this package, Miss Scoggin prepared about 8 to 10 checks (R. 103). She dated the checks with Alamo's rubber stamp, typed on the right the amounts which varied from $200 to $400, made them payable to one Thayer who was purely a fictitious person, and signed a fictitious name as exchange teller (R. 103-104, 105). She returned the checks in this condition to petitioner without signing the name of the vice-president and without printing by machine the amounts thereon (R. 105, 106, 109). Among those prepared by her and returned to petitioner was the check described in the indictment (R. 103-104).

About this time petitioner had one of his employees procure a check protector which he put in the kitchen of his tavern (R. 114-116). He also had two cashier's checks payable to him purchased at different banks (Ex. 8 and 9, R. 283, 284; R. 118). Thereafter petitioner and Granato spent an unusually long time in the kitchen together (R. 117, 129, 132).

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Toward the end of May 1953 (R. 137-138, 139), when Miss Davis, Miss Pool and Granato were together, Granato asked Miss Davis if she could identify false cashier's checks and told her that he had four of them in various amounts, one of them for $400. When Miss Davis told him that cashier's checks were usually mechanically signed, Granato said that his checks were signed by hand. (R. 137-138.)

Granato showed the check at a local barbershop and unsuccessfully attempted to use it to cover a bet for petitioner on a forthcoming heavyweight fight (R. 158-159, 160, 166, 167-168, 239).

About a week later, on June 5, 1953, at the bank Miss Pool showed Miss Davis the check described in the indictment and told her that Granato had given it to her. Miss Davis said that because it was not machine signed, it was not 'good", but Miss Pool said she would have one of the tellers at the bank cash it for her. (R. 139-140.) Miss Pool succeeded in cashing the check through a teller and gave $40 to Miss Davis for her rent (R. 67-68, 140-141).

In due course the check was mailed to the purported issuing bank, First National Bank and Trust Company, Tulsa, Oklahoma, since there was no First National Bank in Tulsa (R. 48, 51, 53, 55). It was there that the forgery was discovered (R. 47, 52). The check was endorsed by Elizabeth Pool and "William R. Thayer" (Ex. 1, R. 274, 68-69, 71). The Thayer signature was never identified (R. 191, 199), but by comparing that signature with specimens of Granato's writing, the F. B. I. could

not conclude that it was not Granato's writing (R. 191, 200). Petitioner's handwriting was not compared with the Thayer signature (R. 200).

After Miss Pool cashed the check Granato, who had no visible means of support, gave $140 as payment on a Hudson automobile (R. 173-174, 180-181, 251).

At the close of the government's case petitioner unsuccessfully moved for a directed verdict (R. 9-10).

The final charge to the jury included the following (R. 17):

> This case rests on circumstantial evidence.
>
> A conviction may be had upon circumstantial evidence as well as upon direct evidence. It is not necessary for you to have testimony of some person who can swear he saw the thing done in order for you to find it was done. You can infer the doing of a thing from circumstantial evidence as well as from direct evidence, provided the circumstances are strong enough. However, in arriving at a verdict of guilty upon circumstantial evidence the circumstances must be consistent with each other and must be consistent with the idea of guilt and must exclude every other reasonable hypothesis or if you believe, or have a reasonable doubt thereof, the circumstance to be as consistent with innocence as with guilt, it is your duty and you must acquit the defendants.

By a motion to arrest judgment, petitioner unsuccessfully challenged the composition of the

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grand and petit juries in this case because of the fact that, pursuant to Texas law, women were not called for jury service (R. 26-28).

ARGUMENT

1. Petitioner contends that he was denied a fair and impartial jury trial because pursuant to Texas law women were excluded from the grand jury which indicted him and the petit jury which convicted him. But petitioner misconceives this Court's decision in *Ballard* v. *United States*, 329 U. S. 187 (Pet. 5). There is no constitutional rule or policy requiring women to be placed on jury lists. See *Glasser* v. *United States*, 315 U. S. 60, 65; *Ballard* v. *United States*, 329 U. S. at 199, 204 (dissenting opinions). The basis for the decision in *Ballard* holding that the all male jury therein was illegally constituted was "the purposeful and systematic exclusion of women from the panel" in a state [California] which specifically made women eligible for jury service. It was this "departure from the statutory scheme" which was condemned. 329 U. S. at pp. 193, 195. Admittedly (Pet. 5), no such departure from the statutory scheme is here involved. To the contrary, the statute governing the selection of juries in Texas limited the lists to men.[1] Art. 2133, Vernon's Annotated Civil Statutes of Texas. As the court of appeals held (Pet.

[1] To a degree state law is determinative of the qualifications of federal jurors. By 28 U.S.C. 1861, Congress provided that citizens of the United States over 21 years of age can serve as federal jurors unless "incompetent to serve as a grand or petit juror by the law of the State in which the district court is held."

App. 9-10), petitioner was not deprived of any procedural right either under the statute or the constitution. *Quinones* v. *United States*, 161 F. 2d 79 (C. A. 1), certiorari denied, 331 U. S. 833; *Johnson* v. *Sanford*, 167 F. 2d 738 (C. A. 5); *Martin* v. *United States*, 166 F. 2d 76 (C. A. 4).

Moreover, petitioner's challenge to the composition of the grand and petit juries, made for the first time after trial and verdict, and in the absence of good cause shown for the delay, came too late. Rule 12(b)(2), F. R. Crim. P.; *Frazier* v. *United States*, 335 U. S. 497; *Agnew* v. *United States*, 165 U. S. 36; cf. *Ballard* v. *United States*, *supra*, at 190.

2. Petitioner attacks (Pet. 5-6) the sufficiency of the evidence to support his conviction, apparently on the ground that the circumstantial evidence was not inconsistent with every reasonable hypothesis of innocence. But the rule requiring the exclusion of every hypothesis but that of guilt is at most an instruction which may be given to the jury, as it was here (*supra*, p. 6), and is in no sense a standard of appellate review. Cf. *Holland* v. *United States*, 348 U. S. 121, 139. In this case, as the court below held (Pet. App. 9): "There was abundant circumstantial evidence of a conspiracy and actual commission of the substantive crime by the appellants." Further review by this Court of the sufficiency of the evidence to sustain the verdict is not called for.

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CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL, 1955.

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